

House Bill 1493 (AS PASSED HOUSE AND SENATE)
By: Representative Roberts of the 154th

A BILL TO BE ENTITLED
AN ACT

To create the Public Facilities Authority of Telfair County; to provide for a short title; to provide for definitions; to provide for its purpose; to provide for its powers; to provide for the membership of the authority and their terms of office, qualifications, and compensation; to provide for the issuance and sale of revenue bonds and other obligations; to provide that such revenue bonds and other obligations are not general obligations; to provide for trust indentures; to provide for the security for such revenue bonds and other obligations; to provide for refunding revenue bonds and other obligations; to provide for a principal office; to provide for validation; to provide for no impairment of rights; to provide for trust funds and investments; to provide for the power to set rates, fees, and charges; to provide for exemptions from taxation; to provide for tort immunity; to provide for exemptions from levy and sale; to provide for its area of operation; to provide for supplemental powers; to provide for no power to impose taxes or exercise the power of eminent domain; to provide for the conveyance of property upon dissolution; to provide for liberal construction; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Short title.

This Act shall be known and may be cited as the "Public Facilities Authority of Telfair County Act."

SECTION 2.
Definitions.

As used in this Act, the following terms shall have the meaning specified unless the context or use clearly indicates a different meaning or intent:

(1) "Authority" means the Public Facilities Authority of Telfair County created by this Act.

(2) "Cost of the project" shall include: (A) the cost of construction; (B) the cost of all land and interests therein, properties, rights, easements, and franchises acquired; (C) the cost of acquiring, constructing, or erecting buildings, improvements, materials, labor, and services; (D) the cost of all fixtures, furnishings, machinery, and equipment; (E) issuance costs, including, but not limited to, fees or discounts of underwriters or placement agents, the funding of reserve accounts, financing charges, including interest prior to and during the construction or acquisition of any project and for up to one year after such project is placed into service and operational at the level intended; (F) the cost of construction, engineering, architectural, fiscal, accounting, inspection, and legal expenses relating to a project or to the financing or refinancing of any project and other expenses necessary or incident to determining the feasibility or practicability of any project; and (G) administrative expenses relating to any project or the financing or refinancing thereof, and such other expenses as may be necessary or incident to the financing or refinancing of a project herein authorized, the acquisition, construction, renovation, reconstruction, or remodeling of a project, and the placing of the same in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as part of the cost of the project and may be paid or reimbursed as such out of any funds of the authority, including proceeds of any revenue bonds or other obligations issued under the provisions hereof for any such project or projects and the proceeds of the sale of any contracts, lease agreements, or installment sales agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(3) "County" means Telfair County, Georgia, or its successor.

(4) "Obligations" means and includes revenue bonds, bond anticipation notes, other promissory notes, certificates of participation, custodial receipts, or other similar instruments creating interests in any contracts, lease agreements, or installment sales agreements or in the amounts payable to the authority, directly or indirectly, thereunder.

(5) "Private person" means any individual or any legal entity, other than a public body, whether operated for profit or not for profit.

(6) "Project" means any capital project which may be financed with revenue bonds under general laws in effect from time to time, which is located or to be located in the county, that is determined by the authority to promote the public good or general welfare of the citizens of the county, or of the state, or any of its enterprises or systems, including, but not limited to, the acquisition, construction, renovation, improvement, extension, addition, or equipping within the county of: (A) utility systems and improvements, including without limitation water and sewer systems and facilities, sewage and solid

waste disposal systems and facilities, and electric, gas, and other similar facilities and systems; (B) emergency facilities, including emergency, fire, police, and rescue facilities and equipment; (C) recreational facilities, including parks, athletic fields, buildings, or facilities and other similar facilities or related equipment; (D) public safety facilities, including prisons, jails, police stations, facilities, or equipment, and state patrol or other law enforcement facilities or equipment; (E) educational, cultural, or historical facilities and equipment; (F) administrative facilities or equipment, including municipal buildings and other governmental buildings; (G) courthouses, public libraries, and jails; (H) facilities relating to aviation, including, but not limited to, airports, airfields, airport terminals, hangars, control towers, and facilities for the repair and maintenance of aircraft; and (I) other facilities; any project may be leased to, subleased to, operated, or otherwise used by the authority or any other public body or any private person.

(7) "Public bodies" means and includes the United States of America and any federal agency, department, authority, or any branch of its armed services; any county, political subdivision, or municipality of the state; and any state or local government agency, department, authority, agency, board, authority, or instrumentality, each being a "public body."

(8) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms of this Act or under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law."

(9) "State" means the State of Georgia.

SECTION 3.

Creation of authority: purpose.

There is created a body corporate and politic to be known as the "Public Facilities Authority of Telfair County," which shall be deemed to be a public corporation. Such corporation shall be separate and distinct from any public corporation or other entity heretofore created by the General Assembly and shall be an instrumentality of the state exercising governmental and proprietary powers. The authority is created for the purpose of promoting the public good and general welfare of the citizens of the county and of the state and financing and providing facilities, equipment, and services within the county, for sale to, lease or sublease to, or operation by any public body or any private person. In connection with the exercise of any of its powers, the members of the authority may make findings or determinations that the exercise of its powers as proposed will promote the public good and general welfare and assist public bodies in providing facilities, equipment, and services in the county, and such

95 findings or determinations, if made, shall be conclusive and binding and shall not be subject
96 to review.

97 **SECTION 4.**

98 Powers of the authority.

99 The authority shall have the power:

100 (1) To sue and be sued;

101 (2) To have and to use a seal and to alter the same at its pleasure;

102 (3) To acquire, construct, purchase, hold, own, lease as lessee, expand, improve,
103 renovate, repair, maintain, and operate real and personal property or interests therein;

104 (4) To enter into contracts for operation, management, maintenance, and repair of any of
105 its property and for other purposes;

106 (5) To sell, lease as lessor, or otherwise transfer, pledge, or dispose of any real and
107 personal property or interests therein. In connection with any such lease, sale, transfer,
108 assignment, or other disposition, to the extent allowed by general law, the authority need
109 not comply with any other provision of law requiring public bidding or any notice to the
110 public of such lease, sale, transfer, assignment, or other disposition;

111 (6) To exercise the powers conferred upon a "public corporation" or a "public authority"
112 by Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority
113 being expressly declared to be a "public corporation" or a "public authority" within the
114 meaning of such provision of the Constitution of Georgia;

115 (7) To acquire projects and other property in its own name by gift or by purchase on such
116 terms and conditions and in such manner as it may deem proper. If the authority shall
117 deem it expedient to construct any project on real property or any interest therein or
118 usufruct therein which is subject to the control of any other public body, then such other
119 public body is hereby authorized to convey or lease such real property or interest therein
120 to the authority for no consideration or for such consideration as may be agreed upon by
121 the authority and such other public body, taking into consideration the public benefit to
122 be derived from such conveyance, lease, or usufruct. Any public body may transfer such
123 real property or interest therein without regard to any determination as to whether or not
124 such property or interest therein is surplus;

125 (8) To accept gifts and bequests for its corporate purposes;

126 (9) To appoint, select, and employ, with or without bidding as the authority may choose,
127 officers, agents, and employees, including engineering, architectural, and construction
128 experts, fiscal agents, underwriters or other advisors, and attorneys, and to fix their
129 compensation;

(10) To make and execute with one or more public bodies and private persons contracts, lease agreements, rental agreements, installment sale agreements, and other instruments relating to the property of the authority and incident to the exercise of the powers of the authority, including contracts for constructing, renting, leasing, and selling its projects for the benefit of other public bodies, and, without limiting the generality of the foregoing, authority is specifically granted to the authority and to other public bodies to enter into contracts, lease agreements, rental agreements, installment sale agreements, and related agreements with each other relating to the provision of any project or services for a term not exceeding 50 years, as provided in Article IX, Section III, Paragraph 1(a) of the Constitution of Georgia;

(11) To the extent not prohibited by the Constitution of the state or by general law, to be a co-owner, along with other public bodies and private persons, of any property or business entity if the authority finds and determines that such co-ownership is in the best interests of the authority and will serve the public purposes of the authority;

(12) To purchase policies of insurance as may be deemed appropriate for its corporate purposes;

(13) To operate, lease, sell, transfer, or otherwise dispose of any property, real or personal, or assets of the authority, or to assign its rights under its contracts, lease agreements, or installment sale agreements or its right to receive payments thereunder, either directly or through trust or custodial arrangements whereby interests are created in such contracts, lease agreements, or installment sale agreements or the payments to be received thereunder through the issuance of trust certificates, certificates of participation, custodial receipts, or other similar instruments. In connection with any such lease, sale, transfer, assignment, or other disposition, the authority need not comply with any other provision of law requiring public bidding or any notice to the public of such lease, sale, transfer, assignment, or other disposition;

(14) To accept loans and grants of money or property of any kind from the United States, or any public body or private person, and all public bodies are authorized to make grants to the authority, subject to any limitations in the Constitution of Georgia;

(15) To borrow money for any of its corporate purposes and to issue revenue bonds and other obligations payable from funds or revenues of the authority pledged for that purpose and to pledge and assign any of its revenues, income, rents, charges, and fees to provide for the payment of the same and to provide for the rights of the holders of such obligations;

(16) To enter into: (A) interest rate swaps, collars, or other types of interest rate management agreements; or (B) credit enhancement or liquidity agreements relating to any obligations of the authority, provided that the obligation of the authority under such

167 agreements shall not be a general obligation of the authority but shall be a limited
168 obligation of the authority payable from a specific source of funds identified for such
169 purpose;

170 (17) To make such rules and regulations governing its employees and property as it may
171 in its discretion deem proper;

172 (18) To be sued the same as any private corporation on any contractual obligation of the
173 authority. The authority shall have the same rights to sue any other person or entity as
174 any private corporation;

175 (19) To issue its revenue bonds or other obligations to finance or refinance any project
176 which may be financed by any public body; and

177 (20) To have and exercise usual powers of private corporations except such as are
178 inconsistent with this Act or inconsistent with general law, and to do any and all things
179 necessary and convenient to accomplish the purpose and powers of the authority as herein
180 stated.

181 **SECTION 5.**

182 Members of the authority: terms of office.

183 (a) Each person who is serving as a member of the Development Authority of Telfair County
184 when this Act first becomes law shall also serve as an initial member of the authority for a
185 term of office ending upon the expiration of such person's current term of office as a member
186 of the Development Authority of Telfair County. Thereafter, the members of the Board of
187 Commissioners of Telfair County shall appoint the members of the authority for terms of
188 office that shall be the same as and shall run concurrently with the terms of office of such
189 members of the Board of Commissioners of Telfair County. In the event a vacancy occurs
190 as to a member of the authority during the term of office of such member, the Board of
191 Commissioners of Telfair County shall appoint a successor for the remainder of the
192 unexpired term. A majority of the members of the authority holding office at any time shall
193 constitute a quorum, and no vacancy on the authority shall impair the right of the quorum to
194 exercise all the rights and perform all the duties of the authority, and, in every instance, a
195 majority vote of a quorum shall authorize any legal act of the authority, including all things
196 necessary to authorize and issue revenue bonds and other obligations.

197 (b) The members of the authority shall elect among themselves a president, vice president,
198 and secretary-treasurer, except that by a majority vote of the entire membership, they may
199 elect a person as secretary-treasurer who is not a member of the authority. The members of
200 the authority shall not be entitled to compensation for their services as members of the

authority but may be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

(c) The authority may make rules and regulations for its own governance, and it shall have perpetual existence.

(d) Any change in name or composition of the authority shall in no way affect the vested rights of any private person or public body under the provisions of this Act or impair the obligations of any contracts existing under this Act.

(d) The Board of Commissioners of Telfair County, as officers of the county, may vote on transactions between the county and the authority, and the members of the authority may likewise vote on transactions between the county and the authority, and the same shall not be deemed to create any conflict of interest.

SECTION 6.

Issuance and sale of revenue bonds and other obligations.

The authority shall have power and is authorized from time to time to provide for the issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," and may issue other obligations for the purpose of paying all or any part of the cost of any one or more projects, including the cost of constructing, reconstructing, equipping, extending, adding to, or improving any such project, or for the purpose of refunding, as herein provided, any such bonds or other obligations of the authority or to refund bonds or other obligations of any other authority or public body previously issued to finance or refinance the cost of a project. The principal of and interest on such revenue bonds or other obligations shall be a limited obligation of the authority payable solely from the source or sources of funds specified in the indenture or resolution of the authority authorizing the issuance of such revenue bonds or other obligations. Such revenue bonds or other obligations shall mature on such dates, bear interest at such rate or rates, whether fixed or variable, be subject to redemption, and have such other terms as the authority may provide in the indenture or resolution relating thereto. Such revenue bonds or other obligations may be issued for cash, property, or other consideration and may be sold in a negotiated sale or in a public sale at such price on such terms as the authority may determine. The offer, sale, or issuance of bonds or other obligations of the authority shall be exempt from registration to the extent provided in Chapter 5 of Title 10 of the O.C.G.A., the "Georgia Uniform Securities Act of 2008," as the same may be amended from time to time.

SECTION 7.

Revenue bonds or other obligations not a debt or general obligation.

Revenue bonds or other obligations issued under the provisions of this Act or any loan incurred as authorized herein shall not constitute a debt or a pledge of the faith and credit of any other public body but shall be payable solely from the sources as may be designated in the resolution or indenture of the authority authorizing the issuance of the same. The issuance of such obligations shall not directly, indirectly, or contingently obligate any public body to levy or to pledge any form of taxation whatsoever for the payment thereof, unless otherwise provided by an intergovernmental contract executed by such public body. No holder of any bond or other obligation or receiver or trustee in connection therewith shall have the right to enforce the payment thereof against any property of any other public body nor shall any such bond or other obligation constitute a charge, lien, or encumbrance, legal or equitable, upon any such property, unless otherwise provided by an intergovernmental contract executed by such other public body and the authority. All such obligations shall contain on their face a recital setting forth substantially the foregoing provisions of this section. Nothing in this section shall be construed to prohibit any other public body from obligating itself to pay the amounts required under any intergovernmental contract entered into with the authority pursuant to Article IX of the Constitution of Georgia or any successor provision, including (if such other public body has taxing power) from funds received from taxes to be levied and collected by such other public body for that purpose and from any other source.

SECTION 8.

Issuance of bonds or obligations under indentures or resolutions.

In the discretion of the authority, any issuance of such revenue bonds or other obligations may be secured by a trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings to be received by the authority, including the proceeds derived from the financing, sale, or lease or operation from time to time, of any project. Either the resolution providing for the issuance of revenue bonds or other obligations or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the owners of such bonds or obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority or any lessee or purchaser in relation to the acquisition and construction of any project, the maintenance, operation, repair, and financing

of any project, and the custody, safeguarding, and application of all moneys, including the proceeds derived from the sale or lease of any project or from the sale of any such revenue bonds or other obligations and may contain provisions concerning the conditions, if any, upon which additional bonds or other obligations may be issued, whether on a parity with or subordinate to any other obligations issued by the authority. Such indenture or resolution may set forth the rights and remedies of the owners of such obligations and of the trustee. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the owners of such bonds or other obligations or as otherwise necessary or convenient in connection with the issuance of such obligations. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture.

SECTION 9.

Security for the payment of bonds or other obligations.

The authority may assign or pledge any property or revenues and its interest in any contracts, lease agreements, or installment sales agreements, or the amounts payable thereunder, to the payment of the principal and interest on revenue bonds and other obligations of the authority as the resolution authorizing the issuance of the bonds or other obligations or the trust indenture may provide. The use and disposition of such property or revenues assigned to the payment of bonds or other obligations shall be subject to the indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any lien created by the authority for the payment of such bonds or obligations may be a first lien or a subordinate lien as the authority may provide, and any such indenture or resolution may provide, at the option of the authority, for the issuance of additional bonds or other obligations sharing any lien on a parity or subordinate lien basis.

SECTION 10.

Refunding bonds or obligations.

The authority is authorized to provide by resolution for the issuance of obligations, whether revenue bonds or other obligations, for the purpose of refunding any revenue bonds or other obligations issued under the provisions of this Act or under any other provision of state law so long as such bonds or other obligations were issued for a purpose or project for which the authority could issue bonds or other obligations. The issuance of such refunding bonds or other obligations and all the details thereof, the rights of holders thereof, and the duties of the

301 authority with respect to the same shall be governed by the foregoing provisions of this Act
302 insofar as the same may be applicable.

303 **SECTION 11.**

304 Principal office: venue.

305 The principal office of the authority shall be in the county, and the venue of any action
306 against it shall be in the county. Service upon the authority of any process, subpoena, or
307 summons shall be effected by serving the same personally upon any member of the authority.

308 **SECTION 12.**

309 Validation of revenue bonds: elective validation of other obligations.

310 Revenue bonds of the authority shall be confirmed and validated in accordance with the
311 procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A.,
312 known as the "Revenue Bond Law," as the same now exists or may hereafter be amended.
313 At the election of the authority, other obligations of the authority may be validated as if they
314 were revenue bonds. The petition for validation shall name the authority as a defendant and
315 may also make a party defendant to such action any other private person or public body that
316 has or will contract with the authority with respect to the project for which revenue bonds or
317 other obligations are to be issued and are sought to be validated. The bonds or other
318 obligations, when validated, and the judgment of validation shall be final and conclusive with
319 respect to the validity of such bonds or other obligations and the security therefor against the
320 authority, other parties to the validation, and all other private persons and public bodies,
321 regardless of whether such private persons or public bodies were parties to such validation
322 proceedings. Any action pertaining to the validation of any revenue bonds or other
323 obligations issued under the provisions of this Act and for the validation of any instruments
324 entered or to be entered into by the authority or other private persons or public bodies
325 securing the same shall be brought in the Superior Court of Telfair County, and such court
326 shall have exclusive original jurisdiction of such actions.

327 **SECTION 13.**

328 No impairment of rights.

329 While any of the bonds or other obligations issued by the authority or any interests in
330 contracts of the authority remain outstanding, the powers, duties, or existence of the authority
331 or of its officers, employees, or agents shall not be diminished or impaired in any manner that

will affect adversely the interest and rights of the holders of such bonds or obligations or such interests in contracts of the authority. The provisions of this section of this Act shall be for the benefit of the authority and of the holders of any such bonds or obligations and interests in contracts of the authority and, upon the issuance of bonds or obligations or the creation of interests in contracts of the authority under the provisions of this Act, shall constitute a contract with the holders of such bonds or obligations or such interests in contracts of the authority.

SECTION 14.

Trust funds: permitted investments.

All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or obligations of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act. Any such moneys or funds may be invested from time to time in such investments as may be permitted under the indenture, agreement, or resolution establishing the fund or account in which such funds are held, or if not held in such a fund or account, in such investments as would be permitted for investments of a development authority created under Code Section 36-62-1 of the O.C.G.A., et seq.

SECTION 15.

Power to set rates, fees, and charges.

The authority is authorized to operate, sell, or lease any project and to prescribe and fix rates, fees, tolls, rents, and charges and to revise from time to time and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions, and subleases of its projects, and to determine the price and terms at and under which its projects may be sold, leased, or otherwise disposed of. The authority may establish in its discretion procedures for contracting for any work done for the authority or for the acquisition, sale, transfer, lease, management, or operation of any property, real or personal, of the authority. The authority may contract with others, including private persons, for services relating to the management, operation, sale, or leasing of any project.

SECTION 16.

Revenue bonds or other obligations exempt from taxation.

All revenue bonds or other obligation issued as provided in this Act are declared to be issued or incurred for an essential public and government purpose, and such obligations and the interest thereon shall, to the extent not prohibited by general law, be exempt from all taxation within this state, whether or not the income on such bonds or other obligations is excludable from the gross income of the holders thereof for federal income tax purposes.

SECTION 17.

Essential governmental function: no taxes or assessments.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this Act. The property of the authority is declared to be public property that is exempt from taxes under subparagraph (a)(1)(A) of Code Section 48-5-41 of the O.C.G.A. To the extent not prohibited by general law, the tax exemption for property of the authority shall extend to leasehold interests of lessees thereof.

SECTION 18.

Immunity of authority and members.

The authority shall have the same immunity and exemption from liability for torts and negligence as the county, and the officers, agents, and employees of the authority, when in the performance of the work of the authority, shall have the same immunity and exemption from liability for torts and negligence as the officers, agents, and employees of the county.

SECTION 19.

Authority property not subject to levy and sale.

The property of the authority shall not be subject to levy and sale under legal process, except this provision shall not preclude a sale or foreclosure of any property under the terms of any deed to secure debt, mortgage, assignment, or security agreement that the authority has executed.

SECTION 20.

Authority area of operation.

The scope of the authority's operations shall be limited to the territory embraced within the territorial limits of the county, as the same now or may hereafter exist; provided, however, that nothing in this section shall prevent the authority from contracting with any entity or body, public or private, outside of the county with respect to any project located in the county or located outside of the county in furtherance of its public purposes.

SECTION 21.

Supplemental powers.

This Act shall not in any way take away from the authority any power which may be conferred upon it by law but is supplemental thereto.

SECTION 22.

No power to impose taxes or exercise power of eminent domain.

The authority shall not have the right to impose any tax on any person or property and shall not have the right to exercise the power of eminent domain.

SECTION 23.

Conveyance of property upon dissolution.

Should the authority for any reason be dissolved after full payment of all revenue bonds and other obligations of the authority and the termination of any leases, contracts, or options to which the authority is a party, the interest and any redemption premiums thereon, title to the items of property, and funds of the authority held at the time of dissolution shall, prior to such dissolution, be conveyed and transferred to such one or more public bodies as the authority shall elect.

SECTION 24.

Act to be liberally construed.

This Act shall be liberally construed to effect the purposes hereof.

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SECTION 25.

418 All laws and parts of laws in conflict with this Act are repealed.